Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Technology Transitions	)	GN Docket No. 13-5
	)	
Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers	)	RM-11358
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

COMMENTS OF PREFERRED LONG DISTANCE, INC.

Michael B. Hazzard
Katherine Barker Marshall
Arent Fox LLP
1717 K Street NW
Washington, DC 20036
Telephone: (202) 857-6000

Table of Contents

Preferred Long Distance, Inc. ("PLD")[1] respectfully submits these comments in response to the Commission's Further Notice of Proposed Rulemaking ("*Further Notice*") in the above-captioned proceedings.[2]

I. INTRODUCTION AND SUMMARY

PLD is a competitive switchless reseller of local and long-distances services. PLD holds Certificates of Public Convenience and Necessity to provide service in 18 states: California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Minnesota, Missouri, Nevada, New Mexico, North Carolina, Ohio, Oregon, Texas, Utah, Washington, and Wisconsin. PLD provides services to both small- and medium-sized business customers, and with that background, comments on the Commission's proposed modification to Section 63.71 in relation to the transition from time-division multiplexed ("TDM") copper-based services to fiber-based Internet protocol ("IP") services, and this transition's impact on the competitive marketplace. As a competitive local exchange carrier ("CLEC") and interexchange carrier ("IXC"), PLD relies upon the access to wholesale TDM-based elements in order to provide competitive telecommunications services to its customers, and, as such, is invested in the continued availability of wholesale services obtained from incumbent carriers ("ILECs") to ensure that the competitive marketplace remains robust.

As the Commission has noted, competitive local exchange carriers are the primary source of competition to the ILECs in the nonresidential market.[3] In the *Further Notice*, the

---

1 PLD also does business under the names Ringplanet, Ringplanet Communications, Telplex, and Telplex Communications.

2 *Technology Transitions, Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers, Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, GN Docket No. 13-5, FCC 15-97, Report And Order, Order On Reconsideration, and Further Notice of Proposed Rulemaking (rel. Aug. 7, 2015)("*Order*" or "*Further Notice*").

Commission adopted requirements that ILECs provide reasonably comparable wholesale IP last-mile access to competitors in areas where TDM service has been discontinued, until the Commission completes its review of the special access market. The Commission seeks comment on the need for additional action on these matters.

As a competitive LEC, PLD welcomes the opportunity to comment and details below additional safeguards the Commission should put in place to ensure that CLECs are able to continue participating in the competitive marketplace for the benefit of consumers. Specifically, PLD requests that the Commission take steps to enhance the Section 63.71 process when an ILEC seeks to obtain Section 214 approval to discontinue TDM-based services and convert to IP-based services by: (1) broadening the required notice periods; (2) separating the timeline for the sunset of the reasonably comparable wholesale access rule from the Commission's special access proceeding; and (3) adopting objective criteria to evaluate if an ILEC is communicating and working with interconnected competitors in good faith, including by providing a mechanism to augment the current 180-day notice period for copper retirement should any disputes arise between competitive and incumbent carriers. These actions by the Commission will solidify the vibrancy of a competitive telecommunications marketplace as technology evolves.

II. THE COMMISSION SHOULD ADOPT A BROAD NOTICE PERIOD THAT ILECS MUST MEET PRIOR TO FILING TO DISCONTINUE TDM-BASED SERVICES TO ALLOW COMPETITIVE CARRIERS THE OPPORTUNITY TO MEANINGFULLY REVIEW ALTERNATIVE SERVICES

As part of the *Further Notice*, the Commission is requesting comment regarding potential modifications to the process and procedures under Section 63.71 of the Rules, which carriers must abide by in order to obtain Section 214(a) approval for discontinuance of services.[4] PLD

---

3 *Id.* ¶137.

4 *Further Notice* ¶ 238.

believes that modification of Section 63.71 is essential to guarantee that end-user customers do not suffer service disruptions as a result of the transition from TDM-based services to IP-based services. In addition, modifications must be made to ensure that the public interest is served, in instances where TDM-special access services that are used as wholesale inputs are to be discontinued.

Specifically, an ILEC wishing to discontinue provision of TDM-based wholesale inputs should be required to demonstrate that it has: (1) identified a replacement product or products; (2) provided a detailed notification to its wholesale customers outlining the TDM-based services to be discontinued and available replacement IP-based products; (3) has at least one active replacement IP-based product available; and (4) has afforded enough time for its wholesale customers to test and perform all of the required functions for their transitioning customers. PLD proposes that ILECs be required to provide the notification to and work with their competitive carrier customers at least eighteen (18) months prior to the ILEC filing its application for discontinuance under Section 214(a).

The Commission has noted that many competitive carriers currently utilize ILEC-provided TDM-wholesale inputs, including DS1 and DS3 facilities to obtain "last mile" access to their end-user customers. As a result, there are thousands of these types of facilities in place that connect all different types of customers to their competitive providers. Because of this, the Commission has stated that an ILEC that intends to discontinue a TDM-based special access service that is used as a wholesale input service by competitive carriers is required to provide those competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions, as a prerequisite to obtaining discontinuance authority under Section

214.[5] The Commission's reasons for adopting these requirements were threefold: (1) to protect consumers; (2) to facilitate technology transition; and (3) to preserve the extent of existing competition, in order to ensure that small- and medium-sized businesses, schools, libraries, governmental entities, and other enterprise "end users do not lose service and continue to have choices for communications services."[6]

Accordingly, PLD believes that the Commission should modify Section 63.71 of its Rules to require an ILEC to demonstrate that it has taken the necessary steps to transition end-user customers from TDM-based to IP-based services in its application for discontinuance to ensure that competitive options remain available. Specifically, if an ILEC seeks to replace TDM-based services that are utilized by competitive carriers as wholesale inputs, with an IP-based service or services, the ILEC should be required to provide a certification that it has performed the following steps as part of its application to the Commission:

1. That the ILEC has defined an IP-based replacement or replacements that may be used by competitive carriers to comparably provide service to small- and medium-sized businesses that the competitive carrier currently serves with TDM-based services;
2. That the ILEC has provided adequate advanced notification of the particular interfaces and technologies that it will use as replacement services for the outgoing TDM-based services;
3. That the ILEC has provided an active and functioning replacement at both the carrier edge and at the customer premise of each end user customer of the competitive carrier using the legacy TDM-based wholesale input;
4. That the ILEC has provided the opportunity for competitors to hold meaningful negotiations on substantive terms (rather than ministerial terms such as grammar) of a replacement agreement, if required;
5. That the if the ILEC is providing Plain Old Telephone Service ("POTS") over fiber in a given area that it be required to provide that on a wholesale basis to the competitive carriers operating in that area; and
6. That the ILEC has provided sufficient time, including time to test, evaluate, and configure, for the competitive carrier to transition its end-user customers to the selected replacement product.

---

5 *Order* ¶ 132.

6 *Order* ¶ 101.

These steps should be concluded well in advance of an ILEC filing an application to discontinue offering a TDM-based product. PLD recommends that the Commission require at least eighteen (18) months for these requirements, as it will provide the time necessary for competitive carriers, like PLD, to properly test and evaluate the replacement product or products, negotiate any terms with the ILEC that may be required, plan for the transition, and test and evaluate the new product or products.

In addition, any equipment that competitive carriers have in place that utilizes TDM-based technology would likely need to be replaced when the ILEC transitions its inputs to an IP-based service, including customer premises equipment ("CPE"), as well as at the "carrier's edge," where the competitive carrier's network meets up with the customer's location at the last mile. In order to efficiently manage its resources, including the outlay for new equipment, competitive carriers need as much lead time as possible and be given as much information as possible about the change from a TDM-based to a new IP-based product offering. PLD's proposed eighteen (18) month timeline will allow competitive carriers enough time to evaluate, select, purchase, install and test the new equipment necessary to interface with the new IP-based product both at the customer premises as well as at the carrier's edge.

Further, competitive carriers need this time to evaluate any associated changes in the provisioning process that may come as a result of the ILEC moving from a TDM-based service to an IP-based service, and to determine the most efficient offering for the competitive carrier if the ILEC offers more than one replacement product. The change from a TDM-based product to an IP-based product can bring a whole host of changes in the internal processes necessary to provision service, not only from the ILEC, but to a competitive carrier's end-user customers, both during the transition period itself, but also on an on-going basis going forward. A

competitive carrier needs this time to not only develop the required processes, but also properly budget for them as well. For example, a competitive carrier, such as PLD, may be required to obtain additional customer service staff to handle customer inquiries regarding the change in service offerings, new "trouble report" procedures may need to be established, and new staff may be required to handle new technology issues.

Moreover, the competitive carrier may also be required to negotiate and enter into a new Master Services Agreement ("MSA") with the ILEC as a result of this change, while at the same time be required to amend its current MSAs with its own end-user customers. PLD is concerned that such negotiations may be limited by the ILEC to merely ministerial changes, rather than substantive terms and conditions, if needed, and requests that the Commission require ILECs to certify that they have accorded their competitive carrier-customers the opportunity to negotiate alternative terms of service, if required. Depending upon the status of these existing contracts, and their clauses relating to termination and changes to service, the competitive carrier may be required to endure a long notice period prior to instituting a change that may be required to accommodate this type of technology transition, or be required to negotiate new MSAs with either the ILECs or its own customers. In PLD's experience, these types of negotiations alone could take up to 12 months or more.

Accordingly, PLD requests that the Commission modify Section 63.71 to require ILECs to provide an eighteen (18) month lead time, and be required to demonstrate that it has performed the steps outlined above within its application for discontinuance.

III. THE COMMISSION SHOULD MAINTAIN THE COMPARABLE WHOLESALE ACCESS CONDITION EVEN AFTER IT CONCLUDES ITS REVIEW OF SPECIAL ACCESS PRICING

PLD is very concerned that, in some instances, the ILEC's change in price structures that flow as a result of moving wholesale inputs away from TDM-based technology to IP-based technology could result in higher costs for competitive carriers that the competitive carriers may not be able to recover. Simply put, if the ILEC offers a rate equal to or nearly equal to its retail offering of the same product, there will be no incentive for competitive carriers to resell such services because there is no room for a reasonable return. To that end, PLD requests that the Commission maintain the reasonably comparable market wholesale rule even after the Commission concludes its review of special access market pricing to ensure that a vibrant competitive telecommunications market continues, and continues to apply it to wholesale platform services.

The Commission provides that it will maintain a policy of "reasonably comparable wholesale access" on "reasonably comparable rates, terms, and conditions."[7] The Commission further states in the *Order* that it looks to the completion of its special access proceeding to sunset these conditions by: (1) identifying a set of rules and/or policies that will ensure rates, terms, and conditions for special access services are just and reasonable; (2) providing notice such rules are effective in the Federal Register; and (3) such rules and/or policies becoming effective.[8] Accordingly, the Commission has sought comment as to how to terminate the "reasonably comparable wholesale access conditions" if they are not tied to the Commission's current special access proceeding as proposed.[9]

In the *Order*, the Commission provided a "totality of the circumstances" test in order to evaluate compliance with the "reasonably comparable access standard" that included as one of

---

7 *Order* ¶ 132.
8 *Id.* at ¶ 132.
9 *Further Notice* ¶¶ 242-243.

its elements if the ILEC's wholesale charges exceed those charged at retail.[10] Arguably, this point is the cornerstone of the Commission's intention of maintaining a competitive telecommunications marketplace. Competitive carriers cannot maintain their operations without some ability to cover their costs plus a reasonable profit. If competitive carriers cannot obtain wholesale service at a lower rate than retail service, end-user customers would not have a cost-incentive to utilize competitive carriers, thereby decreasing choice in the marketplace.

Indeed, the Commission echoed this concern in the *Order*, noting that CLECs "may be unable to modify the terms of their long-term retail contracts to recover the increased cost of the wholesale inputs without losing customers or losing revenue and potentially exiting the market, to the detriment of its customers and the public they serve." And, in instances where the CLEC may be able to enter into new contacts, they may be forced to raise their prices to accommodate the new costs associated with the ILEC's IP-based products, and, as a result, "could weaken the constraint competitive LECs place on incumbent LEC market power."[11]

As the Commission has noted, the special access proceeding does not address wholesale platform services, including AT&T's Local Service Complete and Verizon's Wholesale Advantage that include incumbent LEC loops, transport and local circuit switching.[12] Further, the special access proceeding does not include any type of determination as to whether or not substantial competition exists for wholesale platform services. Therefore, it makes little sense to tie the end of the special access proceeding to the termination of the reasonably comparable market wholesale conditions. Of course, the ILECs retain the ability to demonstrate that substantial competition exists in particular markets in order to lift the requirements, either

---

10 *Order* ¶ 159.
11 *Order* ¶ 136.
12 *Further Notice* ¶ 242.

through forbearance or waiver. The Commission also may, on its own motion, initiate a proceeding that collects the necessary data for making a sound determination as to the state of competition for these services in a given market. Indeed, the Commission could make this evaluation in the pending IP-Enabled Proceeding.[13]

IV. THE COMMISSION SHOULD REQUIRE AN OBJECTIVE CRITERIA TO EVALUATE IF ILECS ARE WORKING IN GOOD FAITH WITH COMPETITIVE CARRIERS WITH REGARD TO COPPER RETIREMENT

The Commission should broadly interpret its current rules for network-change notices to ensure that interconnecting carriers have all of the information required to determine if and how any of the interconnecting end user customers will be impacted by the change.[14] CLECs, like PLD, require detailed information as to the implementation dates, technical information as to the specific circuits that are implicated by the proposed network change, the location where the change will take place, and a description of the planned changes. If the ILEC does not include the information required by Section 51.327 of the Commission's rules in its notice, PLD requests that the Commission refrain from commencing the required 180-day notice period until such deficiencies in the notice are remedied.

Further, in light of the Commission's move from the previous objection procedure to a good-faith requirement that the ILEC work with their interconnecting carriers, PLD implores the Commission to establish objective criteria to evaluate if ILECs are working in good faith with their interconnected competitive carriers. This will provide clarity as each carrier's obligations and rights going forward, and allow the competitive carrier to maintain its operations and, most importantly, service to its end-user customers. Any failure by the ILEC to completely respond in a timely manner to information from an interconnecting CLEC will make it difficult, if not

---

[13] *See IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, ¶ 73 (2004).

[14] *See* 47 C.F.R. §51.327

impossible, for competitive carriers to properly transition customers from TDM-based services to IP-based services without disruption.

Stated differently, ILECs *must* be obligated to respond to a CLEC's request for further information regarding a network change notice in a timely manner to ensure that the transition to copper alternatives can be made within the Commission's 180-day notice period. Although Section 51.327 does require ILECs to provide basic information regarding the proposed network changes to interconnected competitive carriers, like PLD, CLECs also need information regarding available copper alternative options, including pricing, location, and routing and technical information in order to determine what will work best for the CLEC to provide for its customers going forward. Without this information, it is virtually impossible for CLECs to make an informed decision in order to maintain service, and may leave the CLEC's customer base vulnerable to "poaching" by the ILEC. PLD is concerned that an ILEC in a given area where PLD operates could, unless held to an objective standard, take advantage of limitations that PLD does not have access to services to provide Plain Old Telephone Service ("POTS") because of the transition of technologies from copper to fiber.[15] Because of this dependence, objective criteria are required to hold the ILECs accountable, and mitigate the potential for competitive carriers and their end-user customers to be left with no viable options for service.

With respect to the new obligation on incumbents to act in good faith, it is instructive to look at the standard the Commission uses for determining whether negotiations in retransmission-consent disputes are being conducted in good faith.[16] Under the retransmission-

---

[15] Additionally, PLD is concerned that if it is not given enough time to put a new agreement into place, or, in instances where customers cannot, due to network limitations, or will not transition from copper to fiber that the ILEC will be able to winback the PLD's customers out from under PLD without objective criteria and appropriate safeguards.

[16] *See In the Matter of Implementation of Section 103 of the STELA Reauthorization Act of 2014, Totality of the Circumstances Test*, Notice of Proposed Rulemaking, MB Docket No. 15-216,

consent regime, the Commission has established statutory provisions that include a list of standards, the violation of which is considered a *per se* breach of the good-faith negotiation obligation. Drawing from this regime, PLD proposes the following objective criteria by which to evaluate an incumbent's obligation to act and communicate in good faith:

- Refusal by the incumbent LEC to respond to an interconnecting carrier's reasonable request for additional information within 10 days, including by providing specific reasons in writing for rejecting any request;
- Refusal by the incumbent LEC to respond to an interconnecting carrier's reasonable request for a meeting or teleconference within 10 days to discuss the planned network changes and options to transition services or customers;
- Refusal by the incumbent LEC's representative, identified pursuant to Section 51.327(a)(2), to have a meeting or teleconference with a competitor within a reasonable time following a reasonable request;
- Refusal by the incumbent LEC to identify retail and wholesale alternatives, if available, upon request including location, technical specifications, and pricing;
- Execution of new actions by the incumbent LEC that are harmful to the interconnecting carrier and are taken in retaliation for the carrier making a request for additional information (e.g., new or increased demands for the payment of special construction fees);
- Refusal by the incumbent LEC to provide substantive negotiation (not merely ministerial changes) of the terms and conditions any required successor agreement to all competitive carriers, including switchless resellers;
- Refusal by the incumbent LEC to execute or agree to a written agreement, if necessary, that sets forth the full understanding of the parties with respect to the transition to copper alternatives; and
- Refusal by the incumbent LEC to undertake actions previously agreed upon by the incumbent LEC and interconnecting carrier.

While the Commission's proposal that a 90-day extension past the initial 180-day notice period is a good start, PLD remains concerned that it may not be enough time for a competitive carrier to transition its customers without a disruption in service. Therefore, PLD proposes that the Commission implement a procedure whereby the 180-day notice period for retiring copper

---

FCC 15-109, at ¶¶ 2, 4-5 (rel. Sep. 2, 2015).

may be "stopped" and postponed for up to an additional 180 days if an interconnected CLEC files a petition with the Commission alleging that an ILEC is violating the good-faith communications requirement. In the alternative, PLD requests that the Commission "stop the clock" altogether and suspend the notice period until such time as the Commission has had an opportunity to address the petition, thus ensuring that the affected competitive carriers have as much time as required to transition their end user customers.

CONCLUSION

For all the foregoing reasons, PLD respectfully requests that the Commission resolve the issues raised in the *Further Notice* consistent with the recommendations set forth herein.

Respectfully submitted,

PREFERRED LONG DISTANCE, INC.

Michael B. Hazzard
Katherine Barker Marshall
Arent Fox LLP
1717 K Street NW
Washington, DC 20036
Telephone: (202) 857-6000

October 26, 2015